

COURT'S ORDER WHETHER THE CASE IS OR IS NOT
APPROVED FOR REPORTING
{Chapter VIII, Rule 32(2)(b)}

Description of the Case.

Income Tax Appeal No. 7 of 2001 and 11 other Appeals

Commissioner Income Tax and another **...Appellants**

Versus

District Excise Officer **... Respondents**

Approved for reporting.
~~Not approved for reporting.~~

Date: April 5, 2006

(P.C. Verma, J.)

(J.C.S. Rawat, J.)

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(1) Income Tax Appeal No. 7 of 2001

1. The Commissioner of Income Tax, Meerut
2. Income Tax Officer (T.D.S.), Dehradun
..... Appellants

Versus

The District Excise Officer, Dehradun.
..... Respondent

(2) Income Tax Appeal No. 35 of 2001

1. The Commissioner of Income Tax, Meerut
2. Income Tax Officer (T.D.S.), Dehradun
..... Appellants

Versus

The District Excise Officer, Dehradun.
..... Respondent

(3) Income Tax Appeal No. 36 of 2001

1. The Commissioner of Income Tax, Meerut
2. Income Tax Officer (T.D.S.), Dehradun
..... Appellants

Versus

The District Excise Officer, Dehradun.
..... Respondent

(4) Income Tax Appeal No. 37 of 2001

1. The Commissioner of Income Tax, Meerut
2. Income Tax Officer (T.D.S.), Dehradun
..... Appellants

Versus

The District Excise Officer, Dehradun.
..... Respondent

(5) Income Tax Appeal No. 38 of 2001

1. The Commissioner of Income Tax, Meerut
2. Income Tax Officer (T.D.S.), Dehradun
..... Appellants

Versus

The District Excise Officer, Dehradun.

..... Respondent

(6) Income Tax Appeal No. 39 of 2001

1. The Commissioner of Income Tax, Meerut,
2. The Income Tax Officer (T.D.S.), Dehradun.

..... Appellants

Versus

The District Excise Officer, Dehradun.

..... Respondent

(7) Income Tax Appeal No. 55 of 2003

1. The Commissioner of Income Tax, Dehradun,
2. Income Tax Officer (T.D.S.), Dehradun.

..... Appellants

Versus

District Excise Officer, Dehradun.

..... Respondent

(8) Income Tax Appeal No. 56 of 2003

1. The Commissioner of Income Tax, Dehradun,
2. Income Tax Officer (T.D.S.), Dehradun

..... Appellants

Versus

District Excise Officer, Dehradun.

..... Respondent

(9) Income Tax Appeal No. 57 of 2003

1. The Commissioner of Income Tax, Dehradun,
2. Income Tax Officer (T.D.S.), Dehradun

..... Appellants

Versus

District Excise Officer, Dehradun.

..... Respondent

(10) Income Tax Appeal No. 58 of 2003

1. The Commissioner of Income Tax, Dehradun,
2. Income Tax Officer (T.D.S.), Dehradun

..... Appellants

Versus

District Excise Officer, Dehradun.

.....

Respondent

(11) Income Tax Appeal No. 197 of 2005

1. The Commissioner of Income Tax, Dehradun

2. Assistant Commissioner of Income Tax

(T.D.S.), Dehradun

.....

Appellants

Versus

District Excise Officer, Dehradun.

.....

Respondent

(12) Income Tax Appeal No. 198 of 2005

1. The Commissioner of Income Tax, Dehradun

2. Assistant Commissioner of Income Tax

(T.D.S.), Dehradun

.....

Appellants

Versus

District Excise Officer, Dehradun.

.....

Respondent

Sri S.K.Posti, learned counsel for the appellants,

Learned Standing counsel for the respondent.

Date: April 5, 2006

Hon'ble P.C. Verma, J.

Hon'ble J.C.S. Rawat, J.

(Delivered by Hon'ble P.C. Verma, J.)

Appeal Nos. 35/2001, 37/2001 & 39/2001 have been filed by the appellants against the common order dated 03.5.2000 passed by Income Tax Appellate Tribunal, Delhi Bench 'D', New Delhi (**in short' ITAT'**) in ITA Nos. 376, 377 and 378/D/97 respectively (assessment years 1992-93, 1993-94, & 1994-95), whereby the learned ITAT has dismissed the cross objections of the Revenue on the agreement of the parties that the issue involved in the present cross objections stand covered in favour of the assessee by the decision of

the Tribunal in I.T.A. Nos. 162 to 165 (Del) of 1998 dated 29th March, 2000.

Appeal Nos. 55/2003, 56/2003, 57/2003 and 58/2003 have been filed by the appellants against the common order dated 01.8.2001 passed by learned ITAT, Delhi Bench 'D', New Delhi in I.T.A. Nos. 378, 377, 376 and 379/Del/1997 respectively for the financial years 1991/92, 1992-93, 1993-94 and 1994-95, whereby the learned ITAT has quashed the orders of the Commissioner of Income Tax (Appeals) (**in short 'CIT (A)'**) and allowed the appeals filed by the District Excise officer, Dehradun and recorded his finding that the assessee is not an assessee in default under Sec. 206c of the Income Tax Act, 1961(hereinafter referred to as the Act).

Appeal Nos. 36 of 2001 and 38 of 2001 have been filed by the appellants against the common order passed by the learned ITAT, Delhi Bench 'D', New Delhi in I.T.A. Nos. 192 & 4030/Del/1999 respectively for the assessment years 1996-97 and 1997-98, whereby the learned ITAT set aside the order passed by the CIT (A) and restored the matter to the file for deciding the appeals on the ground that the matter regarding maintainability of the appeals stand squarely covered by the decision taken by third Member on 21.1.2000 in ITA Nos. 162 to 165/Del/98.

Appeal Nos. 197 of 2005 and 198 of 2005 have been filed by the appellants against the common order passed by the learned ITAT, Delhi Bench:B:N. Delhi in T.D.S. Nos. 131 & 132/Del/2003 respectively for the financial years 1995-96-1996-97, whereby the learned ITAT dismissed the appeals filed by the department and upheld the impugned order of CIT (Appeals) by he held that there were no liability cast on the District Excise

Officer to deduct TDS on the bid money and deleted the interest charged under Section 206 C(7) of the Act.

Appeal No. 7 of 2001 has been filed by the appellant against the order dated 02.5.2000 passed by learned ITAT, Delhi Bench "D" Delhi in C.O.No.29 (Del) 97 (In ITA No. 379 (Del) 97), whereby the appeal of the revenue was dismissed holding that the appeal lies against the order passed under Section 206-C (1) read with Sec. 206 C (7) of the Act.

2. Since a common issue is involved in all these appeals, we find it convenient to dispose of all these appeals together by this common judgment.

3. The following question of law arises for being answered in these appeals:-

“Whether the basic fee charged under U.P. Excise Licences (Tender-cum-Auction) Rules, 1991 is consideration for sale of liquor under the said Rule and is taxable under Section 260-C of the Income Tax Act?”

4. Brief facts of the case giving rise to these appeals are that the Income Tax Officer (TDS) came to know that the District Excise Officer had not collected tax on Basic Licence Fee (issue price) on sale of alcoholic liquor for human consumption (other than Indian made Foreign) liquor and therefore he directed the District Excise Officer to supply information regarding the same in respect of financial years 1991-92 to 1994-95. The appellant supplied such information to the ITO (TDS). Examination of this information revealed that the District Excise Office had not collected tax on the Basic Licence Fee collected by it in these financial years from the liquor contractors. In reply to the show cause notice issued to

District Excise Officer, he contended before the ITO (TDS) that in accordance with the provisions of Rule 3 (6) of the U.P. Excise Licence (Tender-cum-Auction) Rules, 1991 the Basic Licence Fee has been defined as forming part of the bid money payable by the licensee at the rate specified on total minimum guaranteed quantity of liquor as determined by the Excise Commissioner through Notification, and thus such a bid money is not liable to tax under Section 206C(7) of the Act. After appreciating the evidence the ITO (TDS) observed that the District Excise Officer was responsible for collecting tax at source in compliance with the provisions of Section 206C and he has failed to do so. He, as such, held the assessee to be in default on account of tax collectible at source under Section 206 (6) of the Act.

5. In the appeals filed before the CIT (Appeals), it was held by the CIT (A) that the appellants/District Excise Officer was the 'seller' of the country liquor in the respective financial years and he was liable to collect tax under Section 206 C of the Act from the buyers of the country liquor in his jurisdiction. The learned CIT (A) further held that the 'basic licence fee' is in fact the Excise Duty levied by it and formed part of the cost price of the country liquor, and as the appellant admittedly did not collect tax under Section 206 C of the Act on such a basic licence fee levied and collected by it from retail contractors in respective financial years, therefore, the ITO (TDS) was fully justified to hold it under Section 206C of the Act a person liable to pay the tax, which it failed to collect at source in terms of Section 206 C of the Act, to the credit of the Central Government in accordance with the provisions of sub-section (6) of Section 206 C of the Act as also liable to pay interest under Section 206 C(7) of the Act on such short

collection of tax made by it under Section 206 C of the Act.

6. The District Excise Officer/appellant feeling aggrieved by the aforesaid order of CIT (A) filed the appeals before the learned ITAT. The learned ITAT after hearing the parties recorded a finding that the assessee is not an assessee in default under Section 206C of the Act and quashed the impugned order passed by the CIT(A) and allowed the appeals. It was also recorded by the learned ITAT that 'Basic Licence Fee' did not form part of purchase price and District Excise Officer was not liable to collect tax at source on basic Licence Fee. Feeling aggrieved, the appellant has filed separate appeal in each case

7. We have heard the learned counsel for the parties and have gone through the material on record.

8. By Finance Act, 1988, Section 44-AC and Section 206-C of the Income Tax Act was amended w.e.f. 01.06.1988. Apart from other amendments, an explanation was appended to Section 206-C defining the buyer and seller. For convenience, Section 206-C of the Income Tax Act is reproduced here as under:-

206-C [(1) Every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by another mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table Below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income tax:

S. No.	Nature of goods	Percentage
(i)	Alcoholic liquor for human consumption and tendu leaves	Ten per cent
(ii)	Timber obtained under a forest lease	Fifteen per cent
(iii)	Timber obtained by any mode other than under a forest lease	Five per cent
(iv)	Any other forest produce not being timber or tendu leaves	Fifteen per cent
(v)	Scrap	Ten per cent:]

Provided that where the Assessing Officer, on an application made by the buyer, gives a certificate in the prescribed form that to the best of his belief any of the goods referred to in the aforesaid Table are to be utilized for the purposes of manufacturing, processing or producing articles or things and not for trading purposes, the provisions of this sub-section shall not apply so long as the certificate is in force.

(2) The power to recover tax by collection under sub-section (1) shall be without prejudice to any other mode recovery.

(3) Any person collecting any amount under sub-section (1) shall pay within seven days the amount so collected to the credit of the Central Government or as the Board directs.

(4) Any amount collected in accordance with the provisions of this section and paid under sub-section (3) shall be deemed as payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to him for the amount so collected on the production of the certificate furnished under sub-section (5) in the assessment made under this Act for the assessment year for which such income is assessable.

(5) Every person collecting tax in accordance with the provisions of this section shall within ten days from the date of debit or receipt of the amount furnish to the buyer to whose account such amount is debited or from whom such payment is received, a certificate to the effect that tax has been collected, and specifying the sum so collected, the rate at which the tax has been collected and such other particulars as may be prescribed.

(5A) Every person collecting tax in accordance with the provisions of this section shall prepare half yearly returns for the period ending on 30th September and 31st March in each financial year, and deliver or cause to be delivered to the prescribed

income-tax authority such returns in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.]

(5B) Notwithstanding anything contained in any other law for the time being in force, a return filed on a floppy, diskette, Magnetic cartridge tape, CD-ROM or any other computer readable media as may be specified by the Board (hereinafter referred to as the computer media) shall be deemed to be a return for the purposes of sub-section (5A) and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof of production of the original, as evidence of any contents of the original or of any fact stated therein.

(5C) A return filed under sub-section (5B) shall fulfill the following conditions namely:-

(a) while receiving returns on computer media, necessary checks by scanning the documents filed on computer media will be carried out and the media will be duly authenticated by the Assessing Officer; and

(b) the Assessing Officer shall also take due care to preserve the computer media by duplicating, transferring, mastering or storage without loss of data.]

(6) Any person responsible for collecting the tax who fails to collect the tax in accordance with the provisions of this section, shall, notwithstanding such failure, be liable to pay the tax to the credit of Central Government in accordance with the provisions of sub-section (3).

(7) Without prejudice to the provisions of sub-section (6), if the seller does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of [one and one-fourth] per cent per month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid.

(8) Where the tax has not been paid as aforesaid, after it is collected, the amount of the tax together with the amount of simple interest thereon referred to in sub-section (7) shall be a charge upon all the assets of the seller.]

(9) Where the Assessing Officer is satisfied that the total income of the buyer justifies the collection of the tax at any lower rate than the relevant rate specified in sub-section (1), the Assessing Officer, shall, on an application made by the buyer in this behalf, give to him a certificate for collection of tax at such lower

rate than the relevant rate specified in sub-section (1).

(10) Where a certificate under sub-section (9) is given, the person responsible for collecting the tax shall, until such certificate is cancelled by the Assessing Officer, collect the tax at the rates specified in such certificate.

(11) The Board may, having regard to the convenience of assesses and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (9) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.]

[Explanation- For the purposes of this section-

(a) **“buyer”** means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in sub-section (1) or the **right to receive any such goods** but does not include,-

[(i) a public sector company, or

(ii) a buyer in the retail sale of such goods obtained in pursuance of such sale.

(b) **“scrap”** means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons;

(c) **“seller”** means the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm co-operative society and also includes an individual or a Hindu undivided family whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of Section 44AB during the financial year immediately preceding the financial year in which the goods of the nature specified in the Table in sub-section (1) are sold.]].

9. The vires was challenged of the aforesaid Finance Act of 1988. The Hon'ble Apex Court in the case of *Union of India Vs. A Sanyasi Rao* reported in (1996) 3 SCC Page 465, held as under:-

17.....We have seen that the object in enacting Sections 44-AC and 206-C was to enable the Revenue to collect the legitimate dues of the State from the persons carrying on particular trades in view of the peculiar difficulties experienced in the past and the measure was so enacted to check evasion of substantial revenue due to the State. It is a matter of common knowledge that trade or business produces or results in income which can be brought to tax. In order to prevent evasion of tax legitimately due on such 'income', Section 44-AC and Section 206-C were enacted, so as to facilitate the collection of tax on that income which is bound to arise or accrue, at the very inception itself or at an anterior stage and considered in the said perspective, it is idle to contend that the aforesaid statutory provisions lack legislative competence. After all, the statutory provisions obliging to pay "advance tax" are not anything new and the impugned provisions are akin to that. Counsel for the Revenue brought to our notice Sections 44-B, 44BB, 44-BBA and 44-D and contended that there are other similar provisions in the Act. We should state that they relate to non-residents carrying on business in India and are not much relevant in construing Sections 44-AC and 206-C of the Act. In this context, we should bear in mind that there is a clear distinction between the subject-matter of a tax and the standard by which the amount of tax is measured. Having regard to the past difficulties in making a normal assessment and collection in the case of certain categories of assessees, for convenience sake, the legislature has chosen to make appropriate provision for collection of tax at an anterior stage by adopting the purchase price as the measure of tax. In our view, this is permissible and the standard by which the amount of tax is measured, being the purchase price, will not in any way alter the nature and basis of levy viz. that the tax imposed is a tax on income. It cannot be labeled as a tax on purchase of goods

18.....The receipt of income or realization of profits should not be confused with the idea of accrual of profits. The factual sale fixes the time and place of receipt only. Several places commencing from the buying of raw materials and ending with the production of finished products and the sale thereof will in different proportions point out where the income accrued or arose. It is in this perspective, the Court held, that income accrued where the raw material is systematically purchased which contributes substantially to the ultimate profit which is realized on the sale of the end product. We

understand the ratio of the decision, as highlighting the principle that even operations which are confined to the purchase of goods might constitute a business connection and the profits on sales might be deemed to accrue even at the point of purchase. In other words, in such cases, income (profit is embedded even at the time of purchase. Viewed in this perspective also, we have no doubt that even at the time of purchase, income can be said to have accrued to attract imposition of tax.)

19..... The Charge for the levy of the income that accrued or arose is laid by the charging sections viz. Sections 5 to 9 and not by virtue of Section 44-AC or Section 206-C. The fact that the income is levied at a flat rate or at an earlier stage will not in any way alter the nature or character of the levy since such matters are completely in the realm of legislative wisdom.

10. The definition of 'buyer' in the aforesaid context means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in sub-section (1) or the right to receive any such goods. The 'seller' in the aforesaid context means the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm co-operative society and also includes an individual or a Hindu undivided family by whom the goods of the nature specified in the Table in sub-section (1) are sold. Therefore, the sale of goods specified in Table in sub-Section (1) is **an event of tax** under Section 206-C of the Income Tax Act.

11. Under Sections 24, 24-A, 24-B and 30 of the U.P. Excise Act, 1910 and under the Rules known as U.P. Excise Licenses (Tender-cum-Auction) Rules, 1991 framed for the purpose of aforesaid sections, it is clear that the **basic fee** is not a consideration of **sale of goods** mentioned in Section 206-C of the Income Tax Act and

the definition of 'seller' and 'buyer' in the explanation appended thereto is not attracted. Sections 24, 24-A, 24-B and 30 of the U.P. Excise Act, 1910 read as under:-

24. Grant of exclusive privilege of manufacture, etc.- Subject to the provisions of Section 31, the Excise Commissioner may grant to any person a licence for the exclusive privilege-

- (1) of manufacturing or supplying by wholesale, or of both, or
- (2) of selling by wholesale or by retail; or
- (3) of manufacturing or of supplying by wholesale, or of both, and of selling by retail;

any country liquor or intoxicating drug within any local area.

“24-A. (1) Subject to the provisions of Section 31, the Excise Commissioner may grant to any person a licence or licenses for the exclusive privilege of selling by retail at shops (for consumption both on and off the licensed premises or for consumption off the licenses premises only) any foreign liquor in any locality.

(2) The grant of licence or licenses under sub-section (1) in relation to any locality shall be without prejudice to the grant of licenses for the retail sale of foreign liquor in the same locality in hotels and restaurants for consumption of their premises.

(3) Where more licenses than one are proposed to be granted under sub-section (1) in relation to any locality over the same period, advance intimation of the proposal shall be given to the prospective applicants for every such licence.

(4) The provisions of Sections 25 and 30 and the proviso to Section 39 shall apply in relation to the grant of licence for an exclusive privilege under this section as they apply in respect of the grant of a licence for an exclusive privilege under Section 24.”

24-B Removal of doubts- For the removal of doubts, it is hereby declared-

- (a) that the State Government has an exclusive right or privilege of manufacture and sale of country liquor and foreign liquor;
- (b) that the amount described as licence fee in clause
- (c) of Section 41 is in its essence the rental or

consideration for the grant of such right or privilege by the State Government.

- (c) that the Excise Commissioner as the head of the Excise Department of the State shall be deemed, while determining or realizing such fee, to act for and on behalf of the State Government.*

30. Payment of exclusive privileges –(1) *Instead of or in addition to any duty leviable under this chapter, the State Government or on its behalf the Excise Commissioner may accept payment of a sum in consideration of the grant of the licence for any exclusive or other privilege under Section 24 or Section 24-A.*

(2) The sum payable under sub-section (1) may either be fixed by auction or inviting tenders or otherwise or be assessed on the basis of the sales made or quota lifted under the licence or partly fixed and partly assessed in the aforesaid manner.

(3) For the financial year commencing on April 1, 1983 apart from the sum fixed for grant of licence under Section 24-A, the sum assessed called as assessed fee, on the basis of sales under the licence shall be payable, at the rate of rupees five per reputed quart bottle of all kinds of spirit, wine, liquor and cordial and at the rate of paise sixty per reputed quart bottle of bear, stout and other fermented liquors by the wholesale vendors of foreign liquor.

12. For the sake of convenience, Rule 2, 3, 5 and 8 of U.P. Excise Licenses (Tender-cum-Auction) Rules, 1991 (**in short the Rules**) as well as Notification are reproduced as under:-

2. Application- These rules shall apply to the grant of licenses for **exclusive privilege** selling Bhang, Country liquor, and foreign liquor by retail, under the tender-cum-auction system in the manner prescribed hereinafter but the Excise Commissioner reserves the right to grant any such licence on payment of a fixed fee or fee determined in accordance with graduate or uniform scale or by auction or by inviting tenders or thorough negotiations.]

3. Definitions- in these rules-

1. 'bid-money' means the consideration of the grant of licence under Section 24 or 24-A of the Act for the exclusive privilege of selling by retail any Bhang, or country liquor, or foreign liquor in

the shop or group of shops for which the auction is made; payable by the auction purchaser under Section 30 of the Act in two parts, comprising the licence fee and the basic licence fee, if any:

2. 'basic licence fee' means that part of bid-money which is payable by the auction purchaser calculated on the **entire minimum guaranteed quantity** at the rate notified by the Excise Commissioner from time to time"
3. 'licence fee' means that part of bid-money which is payable on acceptance of the bid other than the part of bid-money described as basic licence fee;
4. 'Minimum guaranteed quantity' means the minimum quantity of Bhang, country liquor or foreign liquor, as the case may be, fixed by the Licensing Authority, if any, guaranteed by the auction purchaser to be lifted by him from the licensed excise bonded warehouse or otherwise as specified by the Excise Commissioner, for the purpose of being sold by retail in his shop or group of shops during the excise year or part of the excise year for which he has obtained the licence, so however, that the total minimum guaranteed quantity for the district shall not be less than the quantity fixed by the Excise Commissioner for the whole district.

5. Power to fix number of shops and group of shops- The Licensing Authority shall be competent to fix the number of shop or group of shops and the minimum guaranteed quantity, if any, of the Bhang or country liquor or foreign liquor in relation to such shop or group of shops.

8. List of licenses to be exhibited- A list of licenses to be disposed of shall be exhibited along with **basic licence fee**, if any, in advance at the Licensing Authority's Office and at the time of the auction. No shops other than those thus specified shall, except under very special circumstances, be auctioned.

NOTIFICATION:

Noti. No.1264-E-2/XIII-92 dated March 20, 1992
No.15121/ Sansodhan/Karadhan/Licence-92-93,
dated March 11, 1992, published in the U.P. Gazette
(Extra.), Part 4, Section (ka), dated 11th March, 1992.

In exercise of the power under clause (g) of Rule 3 of U.P. Excise Licences (Tender-cum-Auction) Rules, 1991, the Excise Commissioner, Uttar Pradesh, with the previous sanction of the State Government, directs that the Basic Licence fee on the minimum guaranteed quantity fixed for each district for Country liquor of strength 36% v/v shall be payable by the auction purchaser at the rate of Rupee 1 per bulk litre w.e.f. 1st April, 1992 and also directs that the Basic Licence fee shall be paid to the Government before the issue of Country Liquor from Distillery or Bonded Warehouse to the Licensed Vendor.

13. A conjoin reading of the provisions of the Excise Act, the Rules and the notification, it is clear that the basic licence fee is the part of the **bid-money** which is calculated on the entire minimum guaranteed quantity at the rate notified by the Excise Commissioner. By notification dated 11.03.1992, the rate has been fixed. Rule 5 of the said Rules provides that the Licensing Authority shall be competent to fix the number of shop or group of shops and the minimum guaranteed quantity for the shop or group of shops. Therefore, while determining the number of shop or group of shops in which the retail sale is to be made, a minimum guaranteed quantity is also fixed. Rule 8 of the said Rules requires a list of licenses to be disposed of shall be exhibited along with basic licence fee, if any, in advance at the Licensing Authority's Office on the basis of rate specified in the notification on the minimum guaranteed quantity. Thus, the basic fee is **minimum bid money** in case of auction and the money to be shown in tender if it is by way of tender. Thereafter, when the bid is held or tender is considered, highest bidder or highest tender is accepted which is bid money and is consideration for grant of licence under Section 24 or 24-A of the Act for parting with exclusive privilege of selling by retail any Bhang, or country liquor, or foreign liquor in the shop or group of

shops for which the auction is held, payable by the auction purchaser under Section 30 of the Act in two parts, comprising the licence fee and the basic licence fee. Thus, the basic fee which is included in **bid money** is part of consideration of parting privilege in favour of **highest bidder** and is **not** the **price of intoxicant**.

14. The Hon'ble Apex Court has held that this consideration for parting with privilege in favour of auction purchaser is **neither a fee nor a tax and nor any duty or levy** but it is a consideration for parting with the privilege parted in favour of highest bidder i.e. auction purchaser. [Reliance is placed on the case laws of Hon'ble Supreme Court in the cases of *Har Shankar Vs. Dy. Excise & Taxation Commr.* (1975) 1SCC 737; *State of Haryana v. Lal Chand*, (1984) 3 SCC 634, at page 634; *State of A.P. Vs. Y.Prabhakara Reddy* (1987) 2 SCC 136; *State of U.P. Vs. Sheopat Rai*, 1994 Supp (1) SCC 8; *Khoday Distilleries Ltd. v. State of Karnataka*, (1995) 1 SCC 574; *State of Orissa Vs. Narain Prasad*, (1996) 5 SCC 740; *State of Orissa Vs. Narain Prasad*, AIR 1997, S.C.(2) Page 1493; *Solomon Antony and others Vs. State of Kerala and others*, (2001) 3 S.C.C., 694 and *Govt. of Maharashtra Vs. Deokar's Distillery* (2003) 5 SCC 669].

15. The Hon'ble Apex Court in the case of ***Union of India Vs. Om Prakash S.S. & Co. and another***, (2001) 3 S.C.C. Page 593, while considering the Section 206-C of the Act held as under:-

1. It is quite evident that Section 206-C of the Income Tax Act, 1961 refers to a case where by reason of the payment to the seller the buyer gets specific goods mentioned in the Table to the said section or gets a right to collect or receive those goods by virtue of that payment. In the instant case, when the Government issues a licence, it only enables the licensee to carry on trade or business in that item. The payment made by

the licensee by way of licence fee does not ipso facto entitle the licensee to lift the goods. For obtaining the goods mentioned in the Table, the licensee has to place an order on the manufacturer or the supplier of the said goods and it is at that point of time that Section 206-C would get attracted.

2. The reliance placed on the explanation to sub-section (11) of Section 206-C is misplaced as is evident from what is stated hereinabove. "Buyer" would mean where a person by virtue of the payment gets a right to receive specific goods and not where he is merely allowed/permitted to carry on business in that trade. It is for this reason that we had earlier dismissed the special leave petitions and any observations of the High Court not in consonance with this may be not strictly correct but the fact remains that on licences issued by the Government permitting the licensee to carry on liquor trade the provisions of Section 206-C are not attracted as the licensee does not fall within the concept of "buyer" referred to in that section. Buyer has to be buyer of goods and not merely a person who acquires a licence to carry on the business.

3. Hence the special leave petition is dismissed.

16. In view of the above, the basic fee is not the price of goods but it is a consideration for parting with the privilege. We may notice here that Rule 31 of the Rules provides that for lifting the intoxicants from the Bonded Warehouse the licensee, apart from paying the **bid-money** in the manner specified in sub-rule (2), Rule 24 shall have to pay the **price of the intoxicants** as fixed by Excise Commissioner or as prevalent at that time. Rule 31 of the Rules reads as under:-

31. Price of the intoxicants- *For lifting the intoxicants from the Bonded Warehouse the licensee, apart from paying the bid-money in the manner specified in sub-rule (2), Rule 24 shall have to pay the price of the intoxicants as fixed by Excise Commissioner or as prevalent at that time.*

17. In View of this, it is clear that it is this money which is realized under Rule 31 of the Rules being price of intoxicants constitutes sale by State Government or by

Excise Commissioner, is taxable under Section 206-C of the Act and not the basic fee.

18. Therefore, the question framed above is answered against the Revenue and in favour of the assessee.

19. The appeals are dismissed accordingly. No order as to costs.

(J.C.S. Rawat, J.) (P.C. Verma, J.)

Rajeev Dang
April 5, 2006